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Hennepin County, Minnesota

Michael H. Cuniff, County Recorder

Deputy 55

TransID 73119

Fees

\$15.00 DOC

\$4.50 SUR

\$10.00 NS

\$29.50 Total

*General Mills  
Legal  
Restrictive Covenants  
November 8, 2004*

**DECLARATION OF RESTRICTIONS AND COVENANTS  
AND AFFIDAVIT CONCERNING REAL PROPERTY CONTAMINATED WITH  
HAZARDOUS SUBSTANCES**

THIS DECLARATION AND AFFIDAVIT is made by BBD Holdings, Inc. ("Owner"). The facts stated herein are stated under oath and are intended to fulfill the disclosure requirements of Minn. Stat. §115B.16, subd. 2 (2002).

WITNESSETH:

WHEREAS, Owner is the fee owner of certain real property located in the City of Minneapolis, Hennepin County, Minnesota, (the "Property"), legally described on Exhibit A attached hereto and herein incorporated by reference:

WHEREAS, a portion of the Property was the site of releases of certain hazardous substances or pollutants and contaminants from approximately 1947 to 1962 when the property was owned by General Mills Inc. The groundwater and soil beneath portions of the Property, later defined herein as the Groundwater Impacted Area legally described on Exhibit C attached hereto and the Soil Impacted Area legally described on Exhibit B attached hereto, are contaminated with chlorinated (primarily trichloroethene (TCE) and associated degradation by-products) and non-chlorinated solvents (primarily benzene, ethylbenzene, toluene, and xylene).

WHEREAS, as a result of remedial investigations, the Property was listed on the National Priorities List ("NPL") on September 21, 1984 and on the Minnesota Permanent List of Priorities (PLP) on October 1, 1984.

WHEREAS, on October 23, 1984, the Minnesota Pollution Control Agency ("MPCA") executed a Response Order by Consent with General Mills Inc. to implement a Remedial Action Plan, to develop and implement an investigation of the groundwater in the St. Peter formation, and to reimburse the MPCA for its expenses;

WHEREAS, remedial investigations, response actions and response action confirmation sampling were conducted by General Mills, Inc. as described in the following documents:

- Feasibility Study Of Remedial Actions dated March 1, 1983.
- Summary Of Alternative Remedial Actions dated May 1, 1983.
- Site Characterization Study and Remedial Action Plan dated June 1, 1983.
- Water Treatment Feasibility Study Groundwater Pump-Out System dated August 1, 1984.
- Groundwater Pump-Out System Plan dated January 1, 1985.
- Monitoring Report St. Peter dated October 1985, December 1986 and February 1, 1987.

- Magnolia Member Aquifer Pump Test Report Remedial Action Design Plan dated November 1, 1991.
- Annual reports for the Site each year since 1986.

WHEREAS, remediation and monitoring wells registered with the Minnesota Department of Health are located on the Site, including:

**Monitoring Wells**

South side - 106, 107, 108 (former Carimona pump out well)

Other - 1, B

**Pumpout Wells (all on south side)**

Glacial aquifer - 109

Magnolia aquifer - MG1, MG2

WHEREAS, the portion of the Property with impacted soils associated with the release at the Site, referred to as the Soil Impacted Area, includes only a portion of the southern portion of the Property described in detail in Exhibit B;

WHEREAS, General Mills conducted an investigation of the Site soils in 2001 on the southern portion of the property and detected, in one or more samples, the following solvent chemicals in concentrations above the Tier 2 Soil Reference Values (SRVs) in the Potentially Accessible Zone (*Risk-Based Guidance for the Soil - Human Health Pathway*, MPCA, January 1999): Benzene, Ethyl benzene, Xylene, Chloroform, 1,2-dichloroethane, 1,1,2,2-tetrachloroethane (*Shallow Soil Investigation Report* - Barr, August 30, 2001) and trichloroethene contamination in soils at greater depths to the water table interface;

WHEREAS, the results of the 2001 Site Soil investigation indicate that the soil does not present a risk to human health or the environment through direct exposure in the accessible zone (the uppermost 4 feet of soil);

WHEREAS, General Mills conducted investigations into the nature and extent of groundwater contamination on Site from 1982 to 1985 installing monitoring wells into the glacial drift, Plattville formation, St. Peter Sandstone and Prairie Du Chien aquifers on Site and in the vicinity of the Site;

WHEREAS, analysis of groundwater samples collected from the wells noted above were found to be contaminated with Tetrachloroethene, Trichloroethene, 1,1,1-Trichloroethane, and cis-1,2-Dichloroethene;

WHEREAS, contamination in the Prairie Du Chien is not believed to be associated with the Site;

WHEREAS, General Mills installed three groundwater extraction wells on the Property between 1985 and 1992 to extract and treat contaminated groundwater from the glacial drift and Plattville aquifers;

**WHEREAS, Owner purchased the Property on October 15, 1990 from Henkel Corporation; and**

**WHEREAS, Owner has agreed to file a Declaration of Restrictions and Covenants placing restrictions and covenants on the Groundwater Impacted Area, described in Exhibit C attached hereto and herein incorporated by reference, and on the Soil Impacted Area, described in Exhibit B attached hereto and herein incorporated by reference.**

**NOW, THEREFORE, Owner makes the following declarations as to limitations, restrictions and uses to which the Soil Impacted Area and the Groundwater Impacted Area may be put, and specifies that such declarations shall constitute covenants to run with the Property as provided by law and shall be binding on the Owner, its successors or assigns, all present or future owners of the Property and all parties who now or hereafter have or hold any right, title or interest in the Property.**

**1. Definition of "Soil Impacted Area".**

**As used herein, "Soil Impacted Area" means a portion of the southern portion of the real property owned by Owner, located in the City of Minneapolis, Hennepin County, Minnesota, and legally described on Exhibit B attached hereto and made a part hereof. The potentially contaminated soil in the Impacted Area exists at a depth greater than 4 feet below existing grade.**

**2 Definition of "Groundwater Impacted Area".**

**As used herein, the Groundwater Impacted Area means a portion of the southeast portion of the real Property owned by Owner, located in the City of Minneapolis, Hennepin County, Minnesota and legally described on Exhibit C attached hereto and made a part hereof.**

**3. Use Restrictions.**

**Subject to the terms and conditions of this Declaration and the reservations and covenants contained herein, Owner hereby declares and imposes the following restrictions ("Restrictions") on the Groundwater Impacted Area and Soil Impacted Area:**

**A. The Soil Impacted Area shall be used for industrial/commercial purposes only;**

**B. No disturbance or dewatering of groundwater is to take place beneath the Groundwater Impacted Area without prior authorization from the MPCA.**

**C. No disturbance or alteration that would expose or disturb the contaminated subsurface of the Soil Impacted Area shall occur on, above or beneath the Soil Impacted Area specifically including, but not limited to, grading, excavation, boring, drilling, or construction, without prior approval from the MPCA and notification to General Mills, Inc. This restriction does not apply to activities on the Soil Impacted Area that take place to depths of 0-4 feet below grade, including maintenance or repair of existing or future buildings, structures, underground sewer, water, electrical, or telephone services, or installation of fencing and signage, when such**

activities are not expected to or are not reasonably likely to result in disturbance or intrusion into the subsurface contaminated soil within the Soil Impacted Area; and

D. No disturbance or alteration of soil at depths greater than 4 feet below grade may take place within the Soil Impacted Area without prior approval from the MPCA. Any soil removed from a depth of greater than 4 feet below existing grade in the Soil Impacted Area must, with MPCA approval, be put back in place and properly covered or must be tested and properly disposed after receiving MPCA approval.

E. The components of the remediation system that remain on the Property (monitoring wells, pumping wells, electrical and plumbing connections, treatment building, etc.) shall remain under the sole control and operation of General Mills, Inc. and its agents and successors.

Any activity on or alteration of the above mentioned areas of the Groundwater Impacted Area and the Soil Impacted Area prohibited by the Restrictions shall not occur without prior written approval of the Commissioner of the MPCA or his/her successor (the "Commissioner"). The Commissioner's approval may include conditions that the Commissioner deems reasonable and necessary to protect public health or welfare or the environment, and shall not be unreasonably withheld. The Restrictions do not apply to, and no prior approval of the Commissioner shall be required for, activities including maintenance or repair of existing buildings, structures, underground sewer, water, electrical, or telephone services, or installation of fencing and signage, when such activities are not expected to or are not reasonably likely to result in disturbance of or intrusion into the subsurface contaminated soil and groundwater within the Groundwater Impacted Area and Soil Impacted Area.

Within 60 days after receipt of a written request for approval to engage in any activities subject to the Restrictions, the MPCA shall respond, in writing, by approving such request, disapproving such request, or requiring that additional information be provided. A lack of response from the Commissioner shall not constitute approval by default or authorization to proceed with the proposed activity.

#### 4. Covenants.

Owner hereby covenants that the Property described on Exhibit B and C shall not be held, transferred, sold, conveyed, occupied, altered, or used in violation of the Restrictions set forth in Section 3 of this Declaration.

#### 5. Reservations.

Nothing contained in this Declaration shall in any way prohibit, restrict or limit Owner, its successors or assigns, from fully conveying, transferring, occupying or using the Property for all purposes not inconsistent with the Restrictions.

#### 6. Duration; Amendment.

**This Declaration and the covenants, grants, and restrictions herein shall continue until terminated, modified, released and/or amended with the written consent of the Commissioner or his/her successor. Notwithstanding the foregoing, this Declaration and the covenants, grants and Restrictions set forth herein may be terminated, modified, released and/or amended upon the occurrence and satisfaction of the following conditions:**

**A. Soil and groundwater sampling is conducted on the Soil Impacted Area and Groundwater Impacted Area with prior written notice to and in accordance with a plan approved by the MPCA; and**

**B. Based on such samples the MPCA certifies that the soil within the Soil Impacted Area and groundwater migrating off the Property no longer pose an unacceptable risk to public health and the environment and that disturbance of such soil and groundwater will not hinder the biodegradation of any remaining contaminations; or**

**C. This Declaration and covenant, grants and restrictions set forth herein may be modified and/or amended if the MPCA finds that the conditions set forth in Section 3 of this Declaration are inadequate to achieve or maintain an acceptable risk to human health and the environment.**

**In the event of a termination, modification, release and/or amendment of this Declaration, the Commissioner, within 60 days after receipt of written request from the owner of the Property, shall execute an instrument in recordable form, terminating, releasing, modifying and/or amending this Declaration.**

**7. Grant and Covenants to MPCA: Right of Entry.**

**Subject to the terms and conditions of this Declaration, Owner grants and conveys to the MPCA, its agents, contractors and subcontractors, and its successors, such rights and interest in the Property as necessary and convenient to enforce the Restrictions set forth in Section 3 of this Declaration, including the right, upon reasonable notice to the then current owner and at reasonable times, to enter from time to time upon the Property to inspect the Property and verify compliance with the Restrictions. The Restrictions declared and the rights and interest granted under this Declaration of Restrictions and Covenants shall run with the Property and bind the Owner, its successors or assigns, all present or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in or to the Property. Where this Declaration of Restrictions and Covenants authorizes or requires an action by the MPCA or its successors, the action is effective if taken by the MPCA Commissioner or his/her successor(s).**

**8. Emergency Procedures.**

**Owner covenants that the procedures set forth below shall be followed when an emergency requires immediate excavation of subsurface contaminated soils on the Groundwater Impacted Area and the Soil Impacted Area, or to respond to other types of emergencies (e.g., fires, floods):**

A. Notify the MPCA within 24 hours of obtaining knowledge of such emergency conditions;

B. Limit disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

C. Undertake precautions to minimize exposure to workers and neighbors of the Groundwater Impacted Area and the Soil Impacted Area to contaminated media (e.g., provide appropriate types of protective clothing for workers conducting the excavation, and establish procedures for minimizing the dispersal of contaminated dust); and

D. Prepare and implement a plan to restore the Groundwater Impacted Area and the Soil Impacted Area to a level that protects public health and the environment. Submit a copy of such a plan for review and approval prior to implementation of the plan. Submit a follow-up report after the plan is submitted so that the MPCA can determine whether the protection of the public health and the environment has been restored.

9. Disclosures.

The Restrictions set forth in Section 3 of this Declaration shall be incorporated in full or by references into all instruments conveying an interest in and/or a right to use the property described on Exhibit B and C of this Declaration (e.g., easements, mortgages, leases). The Restrictions as set forth in Section 3 of this Declaration shall not be required to be incorporated in full or by reference in leases with tenants who lease offices and any other space on the Property described on Exhibit A.

In Witness Whereof, this instrument has been executed on this 23<sup>rd</sup> day of September, 2004.

BBD Holdings,

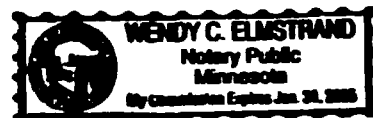
By *Larry Homstad*  
Larry Homstad, President

ACKNOWLEDGEMENT

State of Minnesota    )  
                                  ) ss.  
County of Hennepin    )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 2004, by BBD Holdings, Inc., a Minnesota Corporation by Larry Homstad, its President, on behalf of the Corporation.

*Wendy C. Elmstrand*  
Notary Public





Accepted and Agreed to  
on behalf of  
Minnesota Pollution Control Agency  
Pursuant to Minn. Stat. 115B.17, subd. 15

By *Myrna Halbach*  
Myrna Halbach  
Remediation  
Assistant Division Manager

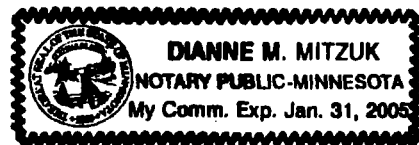
State of Minnesota    )  
                                  ) ss.  
County of Ramsey    )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 2004 by Myrna Halbach, the Assistant Manager of the Remediation Division of the Minnesota Pollution Control Agency, a Minnesota body politic, on behalf of the State of Minnesota.

*Dianne M. Mitzuk*  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

*not* Paul C. Glaeser  
Attorney at Law  
P.O. Box 437  
1013 1<sup>st</sup> Ave.  
Gibbon, Minnesota 55335



*Ramsey County*

Exhibit A

Legal Description of the Property, General Mills/Henkel Superfund Site

All of those parts of Blocks 1 and 2, Elwell and Higgins' Addition to Minneapolis, Hennepin County, Minnesota, including the vacated alleys in said blocks and vacated 1/2 Twentieth Avenue S.E. located between said blocks, which lie Northeasterly of the Northeasterly line of the right of way of Northern Pacific Railway Company hereinafter described, and

All of those parts of Lots 1 and 2, Block 1, Way's Addition to Minneapolis, which lie Northeasterly of the aforesaid Northeasterly line of the right of way of Northern Pacific Railway Company, which line is a straight line parallel with and distant 100 feet Northeasterly, measured at right angles from the center of the Eastbound main track of Northern Pacific Railway and which line intersects the South line Lot 14, in Block 1, Elwell and Higgins' Addition to Minneapolis, Hennepin County, Minnesota, at a point measured along said South line West from the Southeast corner of said Lot 4, a distance of 116.45 feet, at which point of intersection is placed a judicial landmark, and which line also intersects the West line of Lot 28 of Block 2, Elwell and Higgins' Addition to Minneapolis, Hennepin County, Minnesota, at a point which is 116.6 feet measured South along the West line of said Block 2 from the Northwest corner of said Block 2 as originally platted, and at which point of intersection is placed a judicial landmark, according to the plats thereof on file or of record in the office of the Register of Deeds in and for said County.

That part of 19th Avenue Southeast lying between the South line of East Hennepin Avenue and the Northeasterly line of the Northern Pacific Railway Company right of way.

All those portions of Lots 14, 15, 16, 17, 18, 19, and 20 of Block 1, Elwell and Higgins' Addition to Minneapolis and in Lots 1, 2, 3, and 4 of Block 1 of Way's Addition to Minneapolis, Hennepin County, Minnesota, together with that portion of vacated 20th Avenue Southeast, between Blocks 1 and 2 of said Elwell and Higgins' Addition, and those portions of the vacated 14 foot wide alleys in said Blocks 1 and 2, Elwell and Higgins' Addition, and that portion of the vacated 16 foot wide alley in said Block 1 of Way's Addition to Minneapolis, and that portion of vacated 19th Avenue Southeast, between Block 2, Elwell and Higgins' Addition and Block 1, Way's Addition; lying between two lines parallel with and distant respectively 50 feet and 100 feet Northeasterly, measured at right angles from the centerline of the Burlington Northern Railroad Company's main track as now constructed and between the North line of Talmage Avenue and the South line of East Hennepin Avenue according to the recorded plats thereof.

That part of the East Half of vacated alley in Block One (1), Elwell and Higgins' Addition to Minneapolis, lying between extensions across it of the North Westward from the intersection of the West line of said Lot Fourteen (14) with the Northeasterly line of the right of

way of Northern Pacific Railway Company and Southerly of a line drawn from a point in the West line of Lot Twenty-eight (28), Block Two (2) of Elwell and Higgins' Addition to Minneapolis, Hennepin County, Minnesota, distant 16.6 feet South from the Northwest corner of said Block Two (2), to a point in the South line of Lot Fourteen (14), Block One (1) said Addition, distant 116.45 feet West from the Southeast corner thereof, according to the plan thereof on file and of record in the office of the Register of Deeds in and for said County of Hennepin.

Subject to the public easement for street purposes over the North 7 feet of Lots 1 and 30 of Block 1 and Lots 1 and 30 of Block 2, the vacated alleys in said blocks and vacated Twentieth Avenue S.E. located between said blocks, all in Elwell and Higgins' Addition to Minneapolis, Hennepin County, Minnesota, and Lot 1, Block 1, of Way's Addition to Minneapolis, heretofore taken by the City of Minneapolis for the widening of East Hennepin Avenue, formerly Division Street.

Subject to the reservation by the State of Minnesota, in trust for the taxing districts concerned, all of minerals and mineral rights, as provided by law, with respect to Lots 1, 2, 12 and 15 of Block 1, Elwell and Higgins Addition to Minneapolis, Hennepin County, Minnesota.

Subject to the building line restriction created by the instrument of record in Book 1491 of Deeds at Page 224 in the office of the Register of Deeds of Hennepin County.

Subject to a permanent easement for highway purposes which lies north of a line drawn parallel with and distant 25 feet south of the following described line:

Commencing at a point on the north line of the Northwest Quarter of Section 19, Township 29, range 23, a distance of 708.13 feet east of the northwest corner of said Section 19; thence south at right angles with said north line a distance of 12.7 feet; thence west parallel with said north line a distance of 100 feet to the point of beginning of the line being described; thence along a tangential curve to the left having a radius of 1145.92 feet (delta angle of 10 degrees 4' 55") for a distance of 201.64 feet; thence tangent to said curve for a distance of 37.19 feet; thence along a tangential curve to the right having a radius of 916.73 feet (delta angle of 11 degrees 15') for a distance of 180 feet and there terminating.

There are no visible encroachments from or on said property except the fences and timber retaining wall as shown.

Exhibit B

**Soil Impacted Area: General Mills Henkel Superfund Site**

**The western 60 feet of each Lots 14 and 15 and adjacent Alley in Block 1, Elwell and Higgins Addition to Minneapolis, Hennepin County, Minnesota**

## Exhibit C

### Groundwater Impacted Area: General Mills/Henkel Superfund Site

Lots 14, 15, 16 and 17 of Block One (1) of Elwell and Higgins' Addition to Minneapolis and those portions of the vacated 14 foot wide alleys between Lots 14 and 17 and Lots 15 and 16 according to the recorded plat thereof.